had his business in Malaya and lived with his family all his life in Malaya in a house in Kuala Lumpur which was owned by him jointly with the applicant. He had very little connection with India, apart from his short and infrequent visits there. Undoubtedly he had some sentimental links with the country of his origin and was extremely reluctant to sell his ancestral property in that country, but all the other circumstances of his life clearly indicate that he intended permanently to live in Malaya. I am therefore of the opinion that even before the last war he had acquired a domicile of choice in Malaya.

As I have stated above, the deceased lived in Malaya during the Japanese occupation period. In view of what happened during this period, it may well be that he seriously thought about returning to India at the end of the war, but in point of fact when the war was over he was more concerned about the rehabilitation of his business which had been destroyed during the occupation than about returning to India. The affidavits filed in these proceedings contain some evidence of his declarations of intention on the question of a further change in his domicile. The attitude to be adopted when considering such declarations of intention has been stated in *Ross* v. *Ross* [7] as follows:—

"Declarations as to intention are rightly regarded in determining the question of a change of domicile, but they must be examined by considering the persons to whom, the purposes for which, and the circumstances in which they are made, and they must further be fortified and carried into effect by conduct and action consistent with the declared expression."

For the purpose of this case I assume that all such declarations were in fact made but in my opinion they did not amount to an abandonment of the domicile of choice. On the contrary the deceased's declaration shortly before and after the partition of India, which resulted in his home town in India becoming part of Pakistan territory, clearly showed that at that stage he had completely abandoned the idea of going back to India. Even if I disregard his declarations of intention in this connection, I find nothing in the conduct and action of the deceased which may be said to be consistent with his intention of ultimately making a permanent home in India. The law on this point quite clearly is that a person who has formed the intention of leaving a country does not cease to have his home in that country until he acts according to the intention. In other words a domicile of choice continues until it is abandoned. It is divested only when the country of domicile has been actually abandoned with the intention of abandoning it forever.

It has been stated by the applicant in his affidavit that the deceased at the time of his death was a British subject, but this fact merely determines the political status or nationality of the deceased. Nationality and domicile are two different conceptions and a man may change his domicile without divesting himself of his nationality (see *Boldrini* v. *Boldrini and Martini* [8]).

For the reasons which I have stated I have come to the conclusion that the deceased was domiciled in this country and that his estate must be administered according to Malayan law. The costs of all parties as between solicitor and client to be taxed on the higher scale and paid out of the estate.

Order accordingly.

Solicitors: *Morris Edgar & Co.; Lovelace & Hastings; Shook Lin & Bok.*

LEE LIAN CHOO v. LEE KAR CHOO

[F.C. (Barakbah Ag.L.P., Wee Chong Jin C.J. (Singapore) and Tan Ah Tah F.J.) July 8, 1964]

[K.L. — Federal Court Civil Appeal No. 7 of 1964]

Practice and Procedure — Application for extention of time — Non-inclusion of Order of Court in record of appeal — Order of Court served on previous solicitor and not on solicitor on record — Whether application should be granted.

Practice and Procedure — Affidavit — Contents — Preliminary objections — R.S.C. O. 38 rr. 7 and 10.

Practice and Procedure — Change of solicitors — Documents — Service of.

On an application made by the appellant for extention of time for inclusion of a copy of a certain Order of Court which was taken out but not included in the record of appeal which was originally filed because the solicitors for the respondent had served it on the previous solicitor and not on the solicitor whose name appeared on the record it was held that the application should be granted.

Where there has been a change of solicitors and the new solicitor has given proper notice to the solicitor on the other side, the latter should serve all documents on the new solicitor whose name has appeared on the record.

The commentary on O. 38 r. 7 in *Mallal's* Supreme Court Practice (p. 510) relating to dates in affidavit merely means that the date itself should be in figures; months need not be in figures, but can be shown in words.

FEDERAL COURT.

L. A. J. Smith for the appellant.

Dato' S. M. Yong for the respondent.

Tan Ah Tah F.J. (delivering oral judgment): This is an application for extension of time made on behalf of the appellant. The objection raised by counsel for the respondent is based on various grounds. One ground is that the affidavit filed on behalf of the appellant should not be looked at because it has not complied with certain rules of the court. For example, it was said that the dates which appeared in the affidavit should have been in figures and according to counsel for the respondent the date 22nd February 1964 should

appear in the affidavit as "22.2.64". When he was asked whether there was authority for saying that months should be in figures rather than in words he was not able to produce any such authority. In my opinion, the commentary on Order 38 rule 7 at page 510 of *Mallal's* Supreme Court Practice merely means that the date itself should be in figures; months need not be in figures, but can be shown in words.

Another objection was based on the fact that the affidavit itself did not bear certain notes according to the rules of the court. To my mind, that objection, which is based on the provisions of Order 38 rule 10, is not one to which we should give effect in the circumstances of this particular case. In my view, the affidavit should be allowed to be read and relied upon by the appellant.

One of the reasons for some delay on the part of the appellant was that a copy of a certain order of court which was taken out was not included in the record of appeal which was originally filed. The reason for its non-inclusion in that record of appeal arose out of the fact that when it was taken out by solicitors for the respondent it was served, not on Mr. L. A. J. Smith, whose name appeared on the record, but on Mr. N. Sharma who was the solicitor who originally appeared for the appellant. Counsel for the respondent admitted yesterday that when the memorandum of change of solicitors was filed Mr. Smith served notice on the firm of Messrs. S. M. Yong & Co. and therefore had done all that was required of him. In spite of that, counsel for the respondent served the order on Mr. Sharma and his reason for doing so was that Mr. Smith would not have known anything of the case and he thought it better to send it to Mr. Sharma. It seems to me clear beyond any doubt that where there has been a change of solicitors and the new solicitor has given proper notice to the solicitor on the other side, the latter should serve all documents on the new solicitor whose name has appeared on the record.

It was principally due to the failure on the part of counsel for the respondent to follow that practice that Mr. Smith was unable to include a copy of the order of court in the record of appeal. He has now done so because as a result of further correspondence he elicited the fact that a copy of the order had been served on Mr. Sharma. He obtained a copy of the order from the solicitors for the respondent; he included the copy in the new record of appeal; he filed the new record of appeal and served a copy of it on the solicitors for the respondent. In the circumstances it seems to me that the application should be granted.

Wee Chong Jin C.J. (Singapore) (delivering oral judgment): Perhaps I ought to add a few words. I agree with the judgment which has been delivered. The preliminary objections taken by counsel for the respondent as regards the contents of the affidavit seem to my mind absolutely trivial, for example, the fact that the name of the defendant was slightly mis-spelt. Another example is that the date should be in figures and not in words. It surprises me, at any rate, that where the rule gives the court the discretion to permit an affidavit to be used, that these objections should be raised before us.

As regards the application for extension of time I take it that is based on the fact that when the original record of appeal was filed within due time under another sub-rule, a copy of that record was not duly served on the respondent. The circumstances under which the appellant failed to comply with this particular sub-rule were that the solicitor for the appellant had been accustomed to the Rules of Court in Singapore and because of the fact that the present Transitional Rules had only recently been brought into force, he, instead of serving a copy of the record to the respondent's solicitors wrote to the latter informing him that the record had been filed and a copy would be supplied to him at a fee which should be paid in accordance with the Singapore Rules of Court. To that letter there was no reply. It is the main objection taken by the respondent's solicitors now, that having failed to comply with the particular sub-rule, he should not on the authority cited by him, be granted an extension of time.

To my mind this seems to be a case where the court would without any hesitation at all, grant an extension of time and this seems to me to be a case, speaking for myself, where I would expect the solicitors for the respondent to have agreed without any hesitation to an order in terms of the present application. It was merely a failure to serve a copy of the record of appeal on a party to the proceedings where the record, if it had been in order, had been properly filed and where the solicitors for the respondent had been informed that the record had been filed and the copy would be available to him albeit only at a fee, which according to the present rules the solicitor for the appellant was not entitled to.

In the circumstances I agree that the motion should be granted.

Barakbah C.J. (Malaya) concurred.

Application granted.

Solicitors: *L. A. J. Smith; S. M. Yong & Co.*